

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-290 (Sub-No. 290X)

NORFOLK SOUTHERN RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN  
LUCAS COUNTY, OH

Decided: August 28, 2008

Norfolk Southern Railway Company (NSR) filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 2.82-mile line of railroad between milepost TW 0.00 and milepost TW 2.82 in Toledo, Lucas County, OH.<sup>1</sup> Notice of the exemption was served and published in the Federal Register on June 27, 2008 (73 FR 36585-86). The exemption became effective on July 29, 2008. By decision served on July 28, 2008, the proceeding was reopened at the request of the Board's Section of Environmental Analysis, and the exemption was made subject to environmental and historic conditions.

Trail Use Request

In a letter filed on August 4, 2008 (August 4 filing), Toledo Metropolitan Area Council of Governments (TMACOG) requests issuance of a notice of interim trail use (NITU) for the line under the National Trails System Act, 16 U.S.C. 1247(d) (Trails Act), and 49 CFR 1152.29. In response, NSR states that it does not consent to TMACOG's request for a NITU, explaining that it is in the process of negotiating a sale of all or most of the line's right-of-way. NSR further states that its engineering department proposes to remove three bridges on the line, leaving no continuity of the right-of-way to be used for a trail. Because the Trails Act permits only voluntary interim trail use, the Board cannot issue a NITU in this proceeding. The Board's authority to impose trail use conditions is limited because the Board's role under the Trails Act is ministerial and the trail use program is voluntary and consensual between the railroad and the trail user. See Citizens Against Rails-to-Trails v. STB, 267 F.3d 1144 (D.C. Cir. 2001); Rail Abandonments—Use of Rights-of-Way as Trails, 2 I.C.C.2d 591, 598 (1986) (Rail Abandonments). Because NSR does not consent, TMACOG's trail use request will be denied.

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<sup>1</sup> In its notice of exemption, NSR indicated that the portion of the line between milepost TW 2.69 and milepost TW 2.82 shares the right-of-way and a bridge with an active rail line and stated that no salvage or other track removal activities will occur on that segment and that the bridge will be unaffected.

Public Use Request

In its August 4 filing, TMACOG also requests issuance of a 180-day public use condition for the line under 49 U.S.C. 10905, specifically for trail use. TMACOG requests that NSR be prohibited from disposing of the corridor, other than the tracks, ties, and signal equipment, and barring removal or destruction of potential trail-related structures such as bridges, trestles, culverts, and tunnels. NSR states that it does not support TMACOG's public use request for the same reasons it does not consent to TMACOG's NITU request.

Unlike the Trails Act, a public use condition does not require the consent of the railroad.<sup>2</sup> Under section 10905, the Board may prohibit the disposal of rail properties that are proposed to be abandoned and are appropriate for public purposes for a period of not more than 180 days after the effective date of the decision approving or exempting the abandonment.

To justify a public use condition, a party must set forth: (i) the condition sought; (ii) the public importance of the condition; (iii) the period of time for which the condition would be effective; and (iv) justification for the imposition of the period of time requested. See 49 CFR 1152.28(a)(2). Because TMACOG has satisfied these requirements, a 180-day public use condition will be imposed, commencing from the July 29, 2008 effective date of the exemption.<sup>3</sup> Also, a public use condition is not imposed for the benefit of any one potential purchaser, but rather to provide an opportunity for an interested person to acquire the right-of-way that has been found suitable for public purposes. Therefore, with respect to the public use condition, NSR is not required to deal exclusively with TMACOG, but may engage in negotiations with other interested persons.

As conditioned, this decision will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. This proceeding is reopened.
2. TMACOG's request for issuance of a NITU is denied.

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<sup>2</sup> As an alternative to interim trail use under the Trails Act, the right-of-way may be acquired for public use under section 10905. See Rail Abandonments at 608.

<sup>3</sup> As mentioned above, NSR indicates that it is contemplating removing three bridges on the line because, according to NSR, one bridge has clearance problems and two others have become attractive nuisances for trespassers and vandals. NSR must nonetheless maintain the bridges in a safe and responsible manner during the negotiating period of the public use condition.

3. TMACOG's request for issuance of a public use condition is granted, as discussed in this decision. NSR may discontinue service and salvage track and related materials. NSR shall keep intact the right-of-way, including bridges, trestles, culverts, and tunnels, for a period of 180 days, commencing from the July 29, 2008 effective date of the exemption (until January 25, 2009), to enable any state or local government agency, or other interested person, to negotiate the acquisition of the line for public use.

4. This decision is effective on its service date.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Anne K. Quinlan  
Acting Secretary